

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

15 Cr. 95 (AJN)

6 JAMAL BLAIR,

7 Defendant.  
-----x

8 New York, N.Y.  
9 November 16, 2016  
10 10:30 a.m.

11 Before:

12 HON. ALISON J. NATHAN,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
Southern District of New York

17 JESSICA FEINSTEIN

Assistant United States Attorney

18 RUSSELL T. NEUFELD

19 DAVID STERN

Attorneys for Defendant

20

21

22

23

24

25

1 (Case called)

2 MS. FEINSTEIN: Good morning, your Honor, Jessica  
3 Feinstein for the government.

4 THE COURT: Good morning, Ms. Feinstein.

5 MR. NEUFELD: Russell Neufeld and David Stern for  
6 Mr. Blair. Good morning.

7 THE COURT: Good morning to both of you. Good  
8 morning, Mr. Blair. We are starting half an hour late. I need  
9 to step off the bench at about 11:15. If we are not finished  
10 by then, we will return this afternoon to complete. This was  
11 scheduled for 10:00. We are starting half an hour late.

12 MR. STERN: Judge, I'm sorry. That's my fault. I  
13 didn't realize the line would be as long as it was. I should  
14 have gotten here earlier. It was my fault.

15 THE COURT: I have been informed, Mr. Stern, that  
16 Mr. Blair wishes to plead guilty to Count One of the  
17 indictment, which is S2 15 Cr. 95, is that correct?

18 MR. STERN: It is.

19 THE COURT: Mr. Blair, before I accept your guilty  
20 plea I am going to ask you certain questions so that I can  
21 establish some my satisfaction that you wish to plead guilty  
22 because you are guilty and not for some other reason and also  
23 to establish that you know what you'll be giving up by pleading  
24 guilty. If you don't understand any of my questions or if you  
25 want time to consult with your lawyer for any time or for any

1 reason, let me know and I will give you as much time as you  
2 need. OK?

3 THE DEFENDANT: All right. Correct.

4 THE COURT: If we don't finish going through this  
5 process this morning, we will complete it this afternoon. I  
6 still want you to know that you should take all the time you  
7 need to the extent you have any questions as to anything that  
8 I'm saying that you want to discuss with your lawyers. OK?

9 THE DEFENDANT: All right.

10 THE COURT: Because I will ask you questions today,  
11 Mr. Blair, I am going to place you under oath. I'll ask you to  
12 please stand and raise your right hand.

13 (Defendant sworn)

14 THE COURT: Mr. Blair, you are now under oath, which  
15 means that if you answer any of my questions falsely, you may  
16 be prosecuted for the separate crime of perjury. Do you  
17 understand that?

18 THE DEFENDANT: Yes, understood.

19 THE COURT: And what is your full name, sir?

20 THE DEFENDANT: Jamal Blair.

21 THE COURT: How old are you?

22 THE DEFENDANT: Twenty-five.

23 THE COURT: How far did you go in school?

24 THE DEFENDANT: Tenth grade.

25 THE COURT: Have you ever been treated for any kind of

1 mental illness?

2 THE DEFENDANT: As far as what, what kind of mental  
3 illness?

4 THE COURT: Like depression, anxiety, anything by a  
5 psychologist.

6 THE DEFENDANT: No.

7 THE COURT: Have you ever been under the care of a  
8 psychiatrist or psychologist?

9 THE DEFENDANT: When you say care, like what you mean?

10 THE COURT: Did you meet with them, talk about your  
11 feelings?

12 THE DEFENDANT: Yes.

13 THE COURT: And was that in prison or outside of  
14 prison?

15 THE DEFENDANT: Outside of prison.

16 THE COURT: What was that for?

17 THE DEFENDANT: Mental health.

18 THE COURT: Did that doctor give you any medication to  
19 take for mental health issues?

20 THE DEFENDANT: Yeah.

21 THE COURT: Do you remember what kind of medication?

22 THE DEFENDANT: Remeron.

23 THE COURT: How did that help you?

24 THE DEFENDANT: It was a long time ago. I can't  
25 really remember.

1                   THE COURT: How old were you?

2                   THE DEFENDANT: Fourteen, 15.

3                   THE COURT: And do you know the mental illness that  
4 you were treated for? Was it anxiety or depression or  
5 addiction or something else?

6                   THE DEFENDANT: I can't really recall.

7                   THE COURT: Counsel, do you know what the mental  
8 illness is that he was treated for?

9                   MR. STERN: I think he has a quite complex history,  
10 but I don't think it was a specific diagnosis as to any one  
11 thing or another. I think he has had a history of being  
12 treated.

13                  THE COURT: Anything that interferes, from what you  
14 know, with his ability to communicate with counsel or  
15 understand the nature of the proceedings or the like?

16                  MR. STERN: Absolutely not.

17                  THE COURT: Mr. Blair, other than what you mentioned,  
18 have you been under the care of a psychologist or a  
19 psychiatrist or is that the only time?

20                  THE DEFENDANT: Ain't the same thing?

21                  THE COURT: I'm just asking if that was the only time.  
22 You said it was a long time ago. Have you been under the care  
23 of a psychologist or psychiatrist more recently?

24                  THE DEFENDANT: I visited the counselor psychiatrist a  
25 few times, but nothing more than that.

1                   THE COURT: How about, are you under the care of a  
2 doctor now?

3                   THE DEFENDANT: No.

4                   THE COURT: And have you ever been treated for any  
5 type of addiction?

6                   THE DEFENDANT: No.

7                   THE COURT: Have you taken any drugs, medicine, pills  
8 or alcoholic beverages in the past two days?

9                   THE DEFENDANT: No.

10                  THE COURT: Your mind is clear today?

11                  THE DEFENDANT: Clear.

12                  THE COURT: And you understand what's happening here  
13 today?

14                  THE DEFENDANT: Understood.

15                  THE COURT: Does either counsel have any doubt as to  
16 Mr. Blair's competence to plead at this time?

17                  MS. FEINSTEIN: No, your Honor.

18                  MR. NEUFELD: No, your Honor.

19                  THE COURT: On the basis of Mr. Blair's responses to  
20 my questions, my observations of his demeanor here in court,  
21 and the representations of counsel, I do find that the  
22 defendant is fully competent to enter an informed plea of  
23 guilty at this time.

24                  Mr. Blair, I do want to make sure that you received a  
25 copy of the indictment in this case. This is the document that

1 contains the charges against you. Did you receive that?

2 THE DEFENDANT: Yes.

3 THE COURT: And did you have an opportunity to read it  
4 and discuss it with your lawyer?

5 THE DEFENDANT: Yes, I did.

6 THE COURT: Have you had enough of a chance to discuss  
7 with your lawyer the charge to which you intend to plead guilty  
8 and any possible defenses to that charge?

9 THE DEFENDANT: Yes.

10 THE COURT: And has your lawyer has explained to you  
11 the consequences of entering a plea of guilty?

12 THE DEFENDANT: Yes.

13 THE COURT: And are you satisfied with your lawyer's  
14 representation?

15 THE DEFENDANT: Yes.

16 THE COURT: I am now going to explain certain  
17 constitutional rights that you have. These are rights that  
18 you'll be giving up if you enter a guilty plea. Again, please  
19 listen carefully to what I'm about to say and if there is  
20 anything that you don't understand, let me know and either your  
21 lawyer or I will explain the matter more fully.

22 Under the Constitution and laws of the United States,  
23 you have a right to plead not guilty to the charges in the  
24 indictment. Do you understand that?

25 THE DEFENDANT: Yes.

1                   THE COURT: If you did plead not guilty, you would be  
2 entitled to a speedy and public trial by a jury on the charges  
3 contained in this indictment. Do you understand that?

4                   THE DEFENDANT: Yes.

5                   THE COURT: At a trial you would be presumed to be  
6 innocent and the government would be required to prove you  
7 guilty by competent evidence beyond a reasonable doubt before  
8 you could be found guilty. Do you understand that?

9                   THE DEFENDANT: Run that back again.

10                  THE COURT: Sure. At a trial you would be presumed to  
11 be innocent and the government would have to prove you guilty  
12 by competent evidence and beyond a reasonable doubt. You  
13 understand that?

14                  THE DEFENDANT: Yes.

15                  THE COURT: A jury of 12 people would have to agree  
16 unanimously that you were guilty. You would not have to prove  
17 that you were innocent if you were to go to trial. Do you  
18 understand that?

19                  THE DEFENDANT: Yes.

20                  THE COURT: At that trial and at every stage of your  
21 case you would be entitled to be represented by a lawyer. If  
22 you couldn't afford a lawyer, one would be appointed at public  
23 expense, that is, free of cost to you, to represent you. Do  
24 you understand that?

25                  THE DEFENDANT: Yes.

1                   THE COURT: During a trial the witnesses for the  
2 government would have to come to court and testify in your  
3 presence. Your lawyer could cross-examine the witnesses for  
4 the government, they could object to evidence offered by the  
5 government, and they could offer evidence on your own behalf if  
6 you so desired. You understand that?

7                   THE DEFENDANT: Yes.

8                   THE COURT: You would also have the right to have  
9 subpoenas issued or other process used to compel witnesses to  
10 testify in your defense. Do you understand that?

11                  THE DEFENDANT: Yes.

12                  THE COURT: At a trial, although you would have the  
13 right to testify if you chose to do so, you would also have the  
14 right not to testify. If you decided not to testify, no one,  
15 including the jury, could draw any inference or suggestion of  
16 guilt from the fact that you did not testify. Do you  
17 understand that?

18                  THE DEFENDANT: Yes.

19                  THE COURT: If you were convicted at a trial, you  
20 would have the right to appeal that verdict. Do you understand  
21 that?

22                  THE DEFENDANT: Yes.

23                  THE COURT: Even now, as you are here entering this  
24 plea, you do have the right to change your mind, plead not  
25 guilty, and go to trial on the charges contained in this

1 indictment. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: If you plead guilty and if I accept your  
4 plea, you will give up your right to a trial and the other  
5 rights I have just discussed other than the right to a lawyer,  
6 which you have regardless of whether or not you plead guilty.  
7 If you plead guilty there will be no trial and I'll enter a  
8 judgment of guilty and then at a later date I'll sentence you  
9 on the basis of your plea, after I have considered a  
10 presentence report and whatever submissions I get from your  
11 lawyer and from the government. You understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: If you plead guilty there will be no trial  
14 and no appeal with respect to whether you did or did not commit  
15 this crime. You understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: If you plead guilty, you'll also have to  
18 give up your right not to incriminate yourself because I'll ask  
19 you questions about what you did in order to satisfy myself  
20 that you are guilty as charged. You'll have to admit and  
21 acknowledge your guilt. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Mr. Blair, are you willing to give up your  
24 right to a trial and the other rights I have just discussed  
25 with you?

1                   THE DEFENDANT: Yes.

2                   THE COURT: Turning to the charge in Count One, you  
3 understand that you are charged with participating in a  
4 racketeering conspiracy. Do you understand that's the charge?

5                   THE DEFENDANT: Yes.

6                   THE COURT: Ms. Feinstein, would you please state the  
7 elements of the offense in question?

8                   MS. FEINSTEIN: Yes, your Honor.

9                   THE COURT: Go ahead.

10                  MS. FEINSTEIN: At trial the government would be  
11 required to prove beyond a reasonable doubt each of the  
12 following elements of a racketeering conspiracy: First, an  
13 enterprise, and that is as defined in Title 18, United States  
14 Code, Section 1961, subsection 1, existed. Here, that's an  
15 association in fact with the Big Money Bosses gang; second, the  
16 enterprise was engaged in or its activities affected interstate  
17 or foreign commerce; and, third, the defendant knowingly agreed  
18 that a conspirator, which could include the defendant himself,  
19 would commit two or more predicate racketeering acts in  
20 furtherance of the enterprise. The government would also be  
21 required to prove venue in the Southern District of New York by  
22 a preponderance of the evidence.

23                  THE COURT: Counsel, let me ask, the racketeering  
24 activity that the government understands Mr. Blair to be  
25 pleading to pursuant to this agreement is what?

1                   MS. FEINSTEIN: The distribution of marijuana. As  
2 part of the plea agreement the parties have also agreed that  
3 the defendant will admit that he committed a homicide, as set  
4 forth on page 1 of the plea agreement dated November 9, 2016.

5                   THE COURT: And both of those things are racketeering  
6 activity, as the government understands this plea? I ask that  
7 because the plea agreement lays out life as the maximum  
8 sentence. What the maximum sentence turns on is the underlying  
9 racketeering activity.

10                  MS. FEINSTEIN: Yes, your Honor. If you would give me  
11 one moment just to speak with defense counsel.

12                  THE COURT: Yes.

13                  MS. FEINSTEIN: That's right, your Honor. The  
14 homicide is a racketeering act.

15                  THE COURT: I'll ask you, just because I interrupted  
16 you, counsel, if you would repeat what the elements of the  
17 offense in question.

18                  MS. FEINSTEIN: Of course, your Honor.

19                  THE COURT: Just give me one minute as I think defense  
20 counsel is just explaining to Mr. Blair what your conversation  
21 included.

22                  MR. NEUFELD: Thank you, Judge.

23                  MS. FEINSTEIN: The elements, your Honor, are: First,  
24 an enterprise that's an association in fact, here it's the Big  
25 Money Bosses gang and that enterprise existed; second, the

1 enterprise was engaged in or its activities affected interstate  
2 or foreign commerce; and, third, the defendant knowingly agreed  
3 that a conspirator, which could include the defendant himself,  
4 would commit two or more predicate racketeering acts in  
5 furtherance of the enterprise. The government would also prove  
6 venue in the Southern District of New York by a preponderance  
7 of the evidence.

8 THE COURT: Mr. Blair, did you hear the lawyer for the  
9 government state what the elements of the offense in question  
10 are?

11 THE DEFENDANT: No. I think she might have to talk  
12 more into the mic so I can hear it.

13 THE COURT: Fair enough. I'll ask her to repeat it  
14 again. Ms. Feinstein, if you could pull the microphone up  
15 close.

16 MS. FEINSTEIN: First there was an enterprise, and  
17 that's as defined in Title 18, United States Code, Section  
18 1961, subsection 1. And in that statute, and that defines it,  
19 it could be an association in fact rather than a formal  
20 enterprise, like a business, for example.

21 MR. STERN: Can I stop for a minute after each element  
22 and make sure he understands each one as we go long.

23 MS. FEINSTEIN: Here that's a gang, the Big Money  
24 Bosses gang. The first element is that an enterprise existed  
25 here that enterprise is the Big Money Bosses. That's the first

1 element. Can you hear that, Mr. Blair?

2 MR. STERN: He understands that.

3 THE COURT: The second element.

4 MS. FEINSTEIN: The second element is that enterprise,  
5 so the Big Money Bosses gang was engaged in or its activities  
6 affected interstate or foreign commerce.

7 MR. STERN: He understands that as well.

8 THE COURT: Thank you.

9 MS. FEINSTEIN: Third, that the defendant knowingly  
10 agreed that a conspirator, so that could be the defendant  
11 himself or other individuals, would commit two or more  
12 predicate racketeering acts in furtherance of the enterprise,  
13 the gang.

14 MR. STERN: He understands that one.

15 THE COURT: Those elements, Mr. Blair, that the  
16 government just stated, I want to make sure that you  
17 understand, if you were to go to trial the government would  
18 have to prove those elements beyond a reasonable doubt to the  
19 jury in order for you to be found guilty. Do you understand  
20 that?

21 THE DEFENDANT: Are you saying if I was to go to trial  
22 the government would have to prove these allegations that I was  
23 in BMB and this, that, and the third?

24 THE COURT: They would have to prove that BMB existed  
25 as an enterprise and that is a term that the law defines. They

1 would have to prove that beyond a reasonable doubt. They would  
2 have to prove that this enterprise, BMB, engaged in activity  
3 that affected interstate commerce, so things crossing state  
4 lines were involved. That's often drugs and the like. And  
5 they would have to prove that you knowingly engaged in acts in  
6 furtherance -- that you knowingly associated with this  
7 enterprise.

8 Ms. Feinstein, state to me how you stated its third  
9 element.

10 MS. FEINSTEIN: Yes. That the defendant agreed that  
11 either himself or other individuals would commit two or more  
12 predicate racketeering acts, so criminal acts, that furthered  
13 the gang. So to be clear, the government doesn't have to prove  
14 that the defendant was a member of the gang but merely that he  
15 essentially associated with members of the gang and agreed that  
16 either himself or they committed two or more acts that  
17 furthered the gang.

18 THE DEFENDANT: Understood.

19 THE COURT: Those are the elements that the government  
20 would have to prove at trial beyond a reasonable doubt for you  
21 to be found guilty. You understand that?

22 THE DEFENDANT: Understood.

23 THE COURT: Now I am going to talk to you about the  
24 maximum possible penalties that you face for this crime. The  
25 maximum means the most that could possibly be imposed. It

1 doesn't mean that's what you will receive, but you do have to  
2 understand that by pleading guilty you are exposing yourself to  
3 the possibility of receiving any combinations of punishment up  
4 to the maximum that I'm about to describe. You understand  
5 that?

6 MR. STERN: If I can have one second.

7 THE COURT: Sure.

8 THE DEFENDANT: Understood.

9 THE COURT: First, I am going to talk about the  
10 maximum possible restrictions on your liberty, including the  
11 maximum possible amount of imprisonment.

12 Here the maximum term of imprisonment for Count One is  
13 life and that whatever term you receive could be followed by up  
14 to five years of supervised release. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: And just to go back for a moment to that  
17 term supervised release, that means that you would be subject  
18 to supervision by the probation department upon release and  
19 there would be rules of supervised release that you'd have to  
20 follow. If you were to violate those rules you can be returned  
21 to prison without a jury trial to serve additional time with no  
22 credit for time you served in prison as a result of your  
23 sentence and no credit for any time spent on postrelease  
24 supervision. Do you understand that?

25 THE DEFENDANT: Yes.

1                   THE COURT: In addition to the restrictions on your  
2 liberty, the maximum possible punishment also includes certain  
3 financial penalties. Here the maximum allowable fine is  
4 \$250,000. I can also order restitution to any person or entity  
5 injured as a result of your criminal conduct. I can also order  
6 you to forfeit all property derived from the offense or used to  
7 facilitate the offense and, finally, I must order a mandatory  
8 special assessment of \$100. Do you understand that what I've  
9 just described are the maximum possible financial penalties you  
10 face for this crime?

11                   THE DEFENDANT: Yes.

12                   THE COURT: Mr. Blair, you are a United States  
13 citizen, is that correct?

14                   THE DEFENDANT: Correct.

15                   THE COURT: You should understand that as a result of  
16 your guilty plea you may lose certain valuable civil rights to  
17 the extent that you have them now or could otherwise obtain  
18 them now, such as the right to vote, the right to hold public  
19 office, the right to serve on a jury, and the right to possess  
20 any kind of firearm. Do you understand that?

21                   THE DEFENDANT: Yes.

22                   THE COURT: Now, you are serving another sentence now,  
23 is that correct?

24                   THE DEFENDANT: Correct.

25                   THE COURT: Are you facing any additional charges in

1 state or federal court?

2 THE DEFENDANT: One to three.

3 THE COURT: Those are charges you're facing?

4 THE DEFENDANT: No.

5 MR. STERN: All of his state court charges are  
6 resolved and this is his only federal case.

7 THE COURT: And you are currently serving a sentence  
8 in state court, is that correct?

9 THE DEFENDANT: Yes.

10 THE COURT: What I want you to understand is that your  
11 state and federal sentence could be consecutive. That means  
12 any sentence that gets imposed in this case could be added onto  
13 the end of any other sentence you have to serve. You  
14 understand that?

15 Take your time.

16 MR. NEUFELD: Your Honor, in this particular case we  
17 believe that all of the acts that he is serving time for in the  
18 state are relevant conduct in this case. So we have told him,  
19 and we believe this to be the law, that a consecutive sentence  
20 as a matter of law will not occur in this case.

21 THE COURT: Ms. Feinstein, what provision do you have  
22 in mind that would require a mandatory concurrent sentence?

23 MR. STERN: Judge, I'm sorry. I don't have that in  
24 front of me now. But it is our understanding that the majority  
25 of his sentence in the state court is for the exact homicide

1 that he's pleading guilty to here. I can write you a letter  
2 about it if you'd like. I don't know at this moment. But it's  
3 our understanding that they must run concurrently because they  
4 are the exact same act that sets the guidelines here.

5 THE COURT: Ms. Feinstein.

6 MS. FEINSTEIN: Your Honor, I'm not familiar with that  
7 law. I believe there are provisions under the guidelines that  
8 address that.

9 THE COURT: That's my memory.

10 MS. FEINSTEIN: I believe guidelines Section 5G1.3  
11 addresses that, and it would be subsection B.

12 THE COURT: Sub B, which I'll read. If subsection A  
13 does not apply, which it doesn't, and a term of imprisonment  
14 resulted from another offense that is relevant conduct to the  
15 instant offense of conviction, the sentence for the instant  
16 offense shall be imposed as follows. The Court shall adjust  
17 the sentence for any period of imprisonment already served on  
18 the undischarged term of imprisonment if the Court determines  
19 that such period of imprisonment will not be credited to the  
20 federal sentence by the Bureau of Prisons. And the sentence  
21 for the instant offense shall be imposed to run concurrently to  
22 the remainder of the undischarged term of imprisonment.

23 MS. FEINSTEIN: Your Honor, I think it's sometimes  
24 unclear and more research has to be done into whether the  
25 Bureau of Prisons will credit a federal sentence or not.

1      Typically those conversations occur prior to sentencing. Sort  
2      of regardless, the guidelines, as your Honor well knows, are  
3      not binding on the Court.

4 THE COURT: I'm certainly not prepared to suggest that  
5 anything other than it could be consecutive, which is candidly  
6 what I've said in every allocution, every plea colloquy I've  
7 ever done in five years. I've done a lot of them. Unless I've  
8 got some clear basis to say otherwise, you might be right.  
9 Obviously, clearly I'd have the discretion to run them  
10 concurrently at the same time. There is no doubt about that.  
11 But for purposes of understanding the maximum consequences  
12 possible under this agreement, I think we need to have  
13 authority for what you've described to Mr. Blair before  
14 proceeding.

1                   THE COURT: Understood.

2                   MR. NEUFELD: Secondly, we all understand that the  
3 Court has the power and the discretion to sentence outside of  
4 the guidelines and to sentence him up to life on what he's  
5 pleading guilty to today. If the Court were to sentence him to  
6 life and that would run concurrent or consecutive to his state  
7 charge, that would be of little moment, I think. And we will  
8 be happy to address the current and consecutive issue in our  
9 sentencing submission. I hope that satisfies your Honor.

10                  THE COURT: Just a moment.

11                  Certainly what you said is accurate and I agree with  
12 it and I just want to make absolutely certain that Mr. Blair  
13 understands it and is comfortable proceeding in light of the  
14 discussion which preceded it.

15                  THE DEFENDANT: I'm not comfortable with it. I'm  
16 saying -- I'm being charged with the same crime, what I already  
17 copped out to. You tell me they are running consecutive.

18                  THE COURT: No. I'm saying that it is possible, it is  
19 possible. I'm making no determinations as to that now.

20                  THE DEFENDANT: It is just a reminder, letting me know  
21 it's possible.

22                  THE COURT: I want you to make sure that before you  
23 enter a formal plea of guilty that you understand all of the  
24 possible maximum consequences that could happen. One  
25 possibility is that I could run the sentence here consecutive

1 to the sentence you're already serving.

2 THE DEFENDANT: For the same crime?

3 THE COURT: Yes.

4 THE DEFENDANT: Understood.

5 THE COURT: Thank you, Mr. Blair. Do you need any  
6 more time to discuss this with your attorneys or you feel  
7 comfortable proceeding?

8 THE DEFENDANT: Yeah.

9 THE COURT: You're OK to proceed.

10 I do want to make sure that you understand, Mr. Blair,  
11 that if your lawyer or anyone else has attempted to predict  
12 what your sentence will be, the prediction could be wrong. No  
13 one, not your lawyer, not the government's lawyer, no one could  
14 give you any promise as to what your sentence will be since I  
15 am going to decide your sentence and I am not going to do that  
16 now. I am going to wait until I receive a presentence report  
17 that will be prepared by the probation department. I will do  
18 my own independent calculation of the sentencing guideline  
19 range. I'll consider that and any possible departures from it.  
20 And at base I will determine what a reasonable sentence is for  
21 you based on the sentencing factors that are contained in a  
22 statute called 18 U.S.C. Section 3553(a). You understand all  
23 that?

24 THE DEFENDANT: Yes.

25 THE COURT: You've discussed these issues with your

1 lawyers, is that right?

2 THE DEFENDANT: I have discussed the issues as far as  
3 what you just said a while ago?

4 THE COURT: Yes.

5 THE DEFENDANT: Yeah.

6 THE COURT: Even if your sentence is different from  
7 what your lawyer or anyone else has told you it might be, even  
8 if it is different from what you expect or from what's  
9 contained in the plea agreement that you entered into with the  
10 government, you will still be bound by your guilty plea and  
11 will not be allowed to withdraw your plea of guilty. Do you  
12 understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Now, I understand, Mr. Blair, that there  
15 is a plea agreement entered into between you and your lawyer  
16 and the lawyer for the government. Is that correct?

17 THE DEFENDANT: Understood.

18 THE COURT: So that the plea agreement that you've  
19 entered into with the government, I'm looking at what I  
20 understand is the original here. On the front page it's dated  
21 November 9, 2016 and it appears to be eight pages long. My  
22 deputy will mark it as Court Exhibit 1 and place the original  
23 in front of Mr. Blair.

24 Do you have it in front of you, Mr. Blair?

25 THE DEFENDANT: Yes.

1                   THE COURT: And on the front page is it dated November  
2                   9, 2016?

3                   THE DEFENDANT: Yeah.

4                   THE COURT: And on the last page, the eighth page, is  
5                   that your signature?

6                   THE DEFENDANT: Yeah.

7                   THE COURT: And did you sign it today?

8                   THE DEFENDANT: Yes.

9                   THE COURT: Did you sign it in the presence of your  
10                  lawyer?

11                  THE DEFENDANT: I did.

12                  THE COURT: And at some point before you signed this  
13                  document did you read it?

14                  THE DEFENDANT: Yes.

15                  THE COURT: And did you discuss it with your lawyer?

16                  THE DEFENDANT: Yes.

17                  THE COURT: And do you believe that you fully  
18                  understood it before you signed it?

19                  THE DEFENDANT: I think I understood it.

20                  THE COURT: You feel that you do understand it, is  
21                  that right?

22                  THE DEFENDANT: Yes.

23                  THE COURT: One of the features of this agreement with  
24                  the government is that you've agreed on the guideline range  
25                  that applies in this case, something called the stipulated

1 guideline range. You understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: And in your agreement with the government  
4 that stipulated guideline range is 120 to 150 months, is that  
5 correct?

6 THE DEFENDANT: I didn't hear what you said.

7 THE COURT: The stipulated guideline range is 120 to  
8 150 months' imprisonment?

9 THE DEFENDANT: Yes. I understand.

10 THE COURT: It's important to understand that  
11 agreement is binding on you and it's binding on the government,  
12 but it is not binding on me. I do have my own obligation to  
13 determine the correct guideline range and what the appropriate  
14 sentence is in your case. I'm not saying I will come up with  
15 any range different from the one that you agreed to with the  
16 government, but if I do, I will not let you withdraw your plea,  
17 even if the range I determine is higher than the one that you  
18 agreed to with the government. Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: In your plea agreement you waived your  
21 right to appeal or otherwise challenge any sentence that is 150  
22 months or more. In other words, if I sentence you to 150  
23 months or anything less than 150 months, you would have no  
24 right to appeal or otherwise try to challenge that sentence.  
25 Do you understand that?

1                   THE DEFENDANT: Correct.

2                   THE COURT: Counsel, are there any other aspects of  
3 the agreement that you'd like to highlight at the conference?

4                   MR. STERN: No.

5                   MS. FEINSTEIN: No, your Honor.

6                   THE COURT: Mr. Blair, does the written plea agreement  
7 that we have been discussing, does that constitute your  
8 complete and total understanding of the entire agreement  
9 between you and the government?

10                  THE DEFENDANT: What are you talking about, this right  
11 here?

12                  THE COURT: What's dated November 9, 2016. That's the  
13 agreement?

14                  THE DEFENDANT: Yes.

15                  THE COURT: Does that make up your complete and total  
16 understanding of the entire agreement between you and the  
17 government? Is there anything else?

18                  THE DEFENDANT: No, there ain't nothing else.

19                  THE COURT: I'll just ask it a different way. Other  
20 than what's written in this agreement, has anyone made a  
21 promise to you or offered you any reason to plead guilty or to  
22 sign this agreement?

23                  THE DEFENDANT: No.

24                  THE COURT: Has anyone threatened you or forced you to  
25 plead guilty or to sign the plea agreement?

1                   THE DEFENDANT: No.

2                   THE COURT: Has anyone made a promise to you as to  
3 what your sentence will be?

4                   THE DEFENDANT: No.

5                   THE COURT: I'll ask the government to please maintain  
6 the original of the plea agreement in its records. Thank you.

7                   What I am going to ask you to do now is tell me in  
8 your own words what you did that makes you believe that you are  
9 guilty of Count One charged in the indictment.

10                  THE DEFENDANT: On October 20, 2009, in the Bronx, I  
11 fired a shot that murdered -- accidentally killed Sadie  
12 Mitchell. Also, in the Bronx, in '09, I sold marijuana on two  
13 occasions as part of a gang conspiracy charge in Count One.

14                  THE COURT: Ms. Feinstein, any questions you would  
15 like me to ask Mr. Blair?

16                  MS. FEINSTEIN: I just want to put on the record, your  
17 Honor, that the gang charged in Count One that the defendant  
18 referred to is the Big Money Bosses and that the defendant's  
19 sale of marijuana, the government would prove, was in  
20 furtherance of the activities of the Big Money Bosses gang.

21                  THE COURT: Mr. Blair, you disagree with anything the  
22 government just said?

23                  THE DEFENDANT: No. I didn't really hear what she  
24 said.

25                  THE COURT: Ms. Feinstein, would you repeat it.

1                   MS. FEINSTEIN: The defendant allocuted that he sold  
2 marijuana on two occasions as part of a gang charged in Count  
3 One. And I just wanted to put on the record that that gang is  
4 the Big Money Bosses gang and that the defendant sold  
5 marijuana, as he just indicated, in furtherance of the Big  
6 Money Bosses gang.

7                   THE COURT: Did you hear, Mr. Blair?

8                   THE DEFENDANT: Yes, I did.

9                   THE COURT: Do you disagree with anything the  
10 government just said?

11                  THE DEFENDANT: I disagree, but it doesn't matter.  
12 Yes, I agree.

13                  THE COURT: Ms. Feinstein, no questions you want me to  
14 ask Mr. Blair?

15                  MS. FEINSTEIN: Just to clarify whether he agrees or  
16 disagrees --

17                  THE COURT: He said he agreed.

18                  MS. FEINSTEIN: Yes, your Honor. That's fine.

19                  THE COURT: Let me ask defense counsel, do you know of  
20 any valid defense that would prevail at trial or any reason why  
21 your client should not be permitted to plead guilty?

22                  MR. NEUFELD: It would be a possible statute of  
23 limitations defense to the current indictment that he would be  
24 waiving by pleading here. We don't know whether it would  
25 prevail at trial or not, but it's a possible defense. If there

1 were to be a superseding indictment in this case that charged  
2 the capital murder count for the Sadie Mitchell homicide, the  
3 statute of limitations would not apply. So it's totally in his  
4 interests to waive that possible defense at this time.

5 THE COURT: I assume, but just for the record, that  
6 you've had discussions with Mr. Blair and explored these issues  
7 with him?

8 MR. NEUFELD: Absolutely.

9 THE COURT: Mr. Blair, you believe you've had  
10 sufficient time to discuss the issue with your lawyers that  
11 they just mentioned?

12 THE DEFENDANT: Correct.

13 THE COURT: And let me ask defense counsel if you  
14 agree there is a sufficient factual predicate for the guilty  
15 plea.

16 MR. NEUFELD: Yes.

17 THE COURT: Ms. Feinstein, will you please proffer  
18 what evidence the government would bring, if we were to go to  
19 trial, with respect to Mr. Blair.

20 MS. FEINSTEIN: Yes, your Honor. At trial the  
21 government would prove beyond a reasonable doubt through the  
22 following evidence that the defendant was engaged in a  
23 racketeering conspiracy. The proof includes the testimony of  
24 cooperating witnesses, law enforcement witnesses, documentary  
25 evidence, including the results of search warrants that were

executed on social media accounts and cell phones, and narcotics seized.

And using that evidence we would show that from at least in or about 2007 to in or about 2016, the defendant was an associate of a street gang called the Big Money Bosses, or BMB, and that it was a criminal enterprise based in the Bronx, New York. Members and associates of BMB engaged in illegal activities, including shootings of rival gang members, the distribution of narcotics, including crack cocaine and marijuana and other criminal acts. BMB members and associates acknowledge their group affiliation by, among other things, creating and placing on social media services, such as Facebook and YouTube, photographs and rap videos that celebrated their gang and its illegal activities.

The defendant and other members, associates of BMB agreed to commit and the defendant personally participated in racketeering acts in furtherance of BMB's affairs. These include, for example, on at least two occasions the defendant engaged in the sale of marijuana along with other individuals associated with BMB and on behalf of BMB.

THE COURT: Let me ask counsel for both sides if you know of any reason I should not accept the defendant's plea of guilty.

MS. FEINSTEIN: No, your Honor.

MR. NEUFELD: No, your Honor.

1                   THE COURT: Mr. Blair, based on everything we have  
2 discussed today, I'm now going to ask you how you formally wish  
3 to plead here with respect to Count One of the superseding  
4 indictment. That's S2 15 Cr. 95. Count One. Do you wish to  
5 plead guilty or not guilty?

6                   THE DEFENDANT: Guilty.

7                   THE COURT: Mr. Blair, because you acknowledge that  
8 you're in fact guilty as charged in the indictment, because I'm  
9 satisfied that you know of your rights, including your right to  
10 go to trial, and that you're aware of the consequences of your  
11 plea, including the sentence which may be imposed, and because  
12 I find that you are knowingly and voluntarily pleading guilty,  
13 I accept your guilty plea and enter a judgment of guilty on  
14 Count One of the superseding indictment. The probation  
15 department will want to interview you in connection with the  
16 presentence report that it will prepare.

17                  Mr. Stern, does defense counsel wish to be present for  
18 any interview in connection with the report?

19                  MR. STERN: We do, yes.

20                  THE COURT: I've ordered the preparation of the  
21 presentence report. I do order there be no interview unless  
22 defense counsel is present.

23                  Mr. Blair, if you choose to speak to the probation  
24 department, please make sure that anything you say is truthful  
25 and accurate. I will read the report carefully and it's

1 important to me in deciding what sentence to impose. You and  
2 your counsel have an opportunity to read the report and examine  
3 it, and I do urge you to do so and discuss it with your lawyer  
4 before sentencing. If there are any mistakes in the report,  
5 please point them out to your lawyer so he can bring them to my  
6 attention.

7 I believe you discussed the following date for  
8 sentencing: February 24, 2017, at 11 a.m. Without objection,  
9 sentencing is set for that date and time.

10 I direct the government to provide the probation  
11 officer with its factual statement within seven days.

12 Defense counsel, please arrange for Mr. Blair to be  
13 interviewed by the probation department within the next two  
14 weeks.

15 I do refer counsel to my individual rules and  
16 practices for criminal cases available on the court's website  
17 which contains some rules regarding sentencing submissions. In  
18 accordance with those rules, the defense submission is due one  
19 week prior to sentencing and the government's submission is due  
20 three days prior to sentencing. Defendant shall remain in  
21 custody pending sentencing.

22 Counsel, is there anything else that I can address at  
23 this time?

24 MR. STERN: Judge, can we have three weeks to prepare  
25 the probation interview? Because next week is taken up a lot

1 by Thanksgiving.

2 THE COURT: Fair enough. Within the next three weeks.

3 Thank you.

4 Anything else, counsel?

5 MR. NEUFELD: No.

6 THE COURT: Thank you. I'll see everyone February 24.

7 We are adjourned.

8 o0o

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25